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Examiner

S. Bel. 10/51

Legal Department
E Branch.

Suit: Belgaum.

In the Court of the Civil Judge(S.D.), Belgaum.
Civil Suit No. 42 of 1949.

Madhavrao Deshpande — Plff.

Vs.

The State of Bombay & ors. — Defts.

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S. Bel. 10/51

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Suits Belgaum

C. S. No. 42 of 1949.

Madhavrao Deshpande

Vs.

State of Bombay and others.

For a declaration that the attachments of suit properties, i.e., forest land in six villages by the Sangli Darbar is automatically vacated and for possession of suit properties

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C.S. No.22 of 1948. 81

Ordinary Regl Civil Suit No. 42 of 1949 of Belgaum. In the Court of the Civil Judge, Senior Division. Belgaum.

...

1. Madhavrao Harihar Deshpande, Brahmin, Ashtekar Inamdar, residing at Shahapur Age 50. Plff.

VS.

1. The Sangli State, represented by :-
   (a) The Chief Revenue Officer, Collector;
   (b) The Rev.Commr. Sangli State, Sangli.
   The State having merged in the Province of Bombay, since the institution of the suit "The Province of Bombay".
2. Virupax Konner Deshapande, residing at Sulebhavi, Brahmin, Inamdar, age 28.
3. Chidambar Lakchanara Deshpande, Brahmin Inamdar, age 55, Belgaum Gondhali galli. Defts.
4. Annaji Narsinha Deshpande, Brahmin, Inamdar, age 25, Gondhali galli, Belgaum.
5. Virupax Sambrao Deshpande, Brahmin Inamdar, age 54, at Kalekundri Khurd.
6. Venkatesh Krishnaji Deshpande, Brahmin, Inamdar at Sutkatti, age 32.

Claim for court fees Rs. 10/-
for Jurisdiction Rs. 500/-

Herein I, the Plff. beg to state as under:-

(1) The Plff's ancestor Annaji Narsinga rendered valuabl services to the Sangli State in critical times of 1819 to 1830 A.D. in bringing about the treaty between the state & the British Govt., in restoration of the Mahals confiscated by the British Govt.& such other matters. In recognition of these services the Deft. State granted in Inam the villages mentioned in para 2 below including the suit property sche-dule No.I to the said Annaji Narsinva, mentioned in Sche-dule No.II, the part of the Plaint. Plff. owns 1/2 of it as successor as to the Defts.Nos.2 to 6. The genealogy of the family showing the succession is at Sche dule I, which is to be treated as part of the plaint.

(2) From the State directly:-
Of the Inams acquired b the Plff's ancestor the follow-ing villages with all its rights to Sheri or waste lands etc. were granted for th services & in the year mentioned against each;-

(A) The entire village of Sulebhavi in 1825 for services rendered in restoration of Mahals confiscated by the British Government;

(B) The entire villages of Tumbergudi and Karankol granted in 1829 for the recovery of extra villages lostby the Deft. State to the British Govt. in commutation.

Both these grants are hereditary, Darobast, Kulbab, Kul-karni and Jat Inam called Sarva Inam in Sangli State.

(3) Sub-Inam from Math Sankeshwar:-

(A) The Plff's ancestor had also acquired(1)Sutagatti, (2)Ningenhatti;(3)Kattanbhavi as Darobast Inam in 1824, 1834 and 1828 respe tively, from Math Sankeshwar.

(B) Yadalahavinatti from Kalji Umaji Jadhav Sarnadgouda watan and Darobast grant in 1834.

(4) The original acquirer Annaji died in 1843, and all Jat Inam & other villages together with waste sheri lands therein including the suit property in Schedule I were attached & possession taken, in th heirship inquiry accord-ing to the custom of the Deft.State & were released in 1844 On the death of Annaji's son, Konner in 187., they were again attached for the like reason & possession taken & released in 1873 recognizing Virupax as his heir on behalf of the joint family. Virupax and his brothers came to partition in 1877, keeping, however, the suit property joint & undivided as waste sheri. On the death of Virupax in 1878 the Inam

Inams. . . .
the suit properties were again attached and the attachment so far as the suit properties are concerned still continues.

The Plff's branch representing the minor son of the ancestor Annaji-Naganath being entitled to 1/. share brought suits for partition at O.S. No.1/1281 and 1/1304 Fasli, obt-ained decrees in 1888 and got possession of its half share in properties except suit properties in Schedule being under attachment for heirship inquiry since 1878 as said above by the Deft. State.

5. The attachment of the property levied in 1878 still con-tinues so far as the suit properties are concerned, though the heirship inquiry has ended recognizing the heir long ago in 1882. The purpose of the attachment, pending the heirship inquiry, ceases as soon as the heir is recognized and there remains no earthly reason to continue the attachment & take the unsuffuct. The act of the Deft. state in doing so is be-yond the scope and purpose of the heirship inquiry and as such is without jurisdiction, ultravies and illegal. Though repeatedly requested, the Deft. State is not prepared to va-cate the attachment. Hence the Plff. is obliged to bring this suit for declaration that the attachment of the suit property levied in 1878 is authomatically vacated on the recognition of the heir, with the consequential relief in the form of permanent injuction and user of the suit property in any way and for accounts for past user by the defendent State during such attachment.

(6) If it be ultimately found or held that the Deft. State cannot be enjoined with injuctions not to interfere with the Plff's possession & user of the suit properties in any way, Plff. prays, in the alternative, that the Deft. state may be enjoined to pay to the plff. the land rev. on suit proper-ties after survey and assessment.

(7) Plff. is not aware so far of any orders of favour or dis-favour passed by Deft. State concerning the suit properties If it be found that some such orders are passed, they being behind the back of the plff., are not binding on him & are illegal & ultra vires.

(8) Plff. owns half of the joint & undivided suit properties & defts. 2 to 6 together own the other half. As defts. 2 to 6 did not join as plffs. they are impleaded as defts. 2 to 6 The Suit properties being yet joint & undivided by defts. 2 to 6, plff. alone can claim the whole against the deft. state to vacate the attachment & to enjoin the deft. state not to deal or interfere with the same in any way.

(9) The cause of action for the suit arose after 28th Oct. '44 when deft state proceeded to attach the Inams and the suit properties on the death of the Khatedar Konner Virupax & when plff came to know of the mistake and illegality on the partx of the def. state in continuing the attachment. The suit is in time on the grounds:-
(a) firstly that the attachment in question being still contd. the cause of action is of a recurring and continuing nature and
(b) Secondly that the deft. state takes the unsuruct as a trustee during continuance of the attachment pending the heirship inquiry for the benefit of the heirs.

(10) the deft. State has been duly served with notice under S.80 of the C.P.C. informing cause of action & reliefs. No-tice was given on 4-9-47 and reached on 6-9-47.

According to law, Collr. represents the state whereas under recent orders the Rev. Comm. To avoid defect either way both are joined as parties representing the State.

(11) The suit being for declaration with injuction as con-

sequential relief and for

con - - - - - -
-sequential relief and for accounts the plfi. assesses the value of the suit as under:-

(a) Rs. 5/- for declaration with injuctions as consequential relief;
(b) Rs.5/- for accounts from the date of attachment to the date the suit. Plff.is prepared to pay the necessary court fees on the aggregate amount settled as due by the Deft.St--ate to the plff.on taking accounts.

Court fees of 4annas 8 on each item is paid.

The value of the suit for jurisdiction is Rs.500/- and the suit being against the state,the court has jursidct -tion to try the suit.

(12) The Plff.prays therefore:-

(a) That the attachment of the suit properties mentioned in Schdeule I made by the Deft.State in 1878 be declared as automatically raised and vacated on thetermination of the heirship inquiry, the continuance thereof thereafter being without any purpose,illegal and ultravires.

(b) That the deft.No. 1 be enjoined permanently not to interfere with the plff's possession and user of the suit property in any way and not to take income arising there--from from various sources and appropriate to it-self.

(c) that in view of the alternative prayer as contained in para 6 above,the deft.1 be enjoined to pay the land rev. on the suit properties to the plff.in future annually after survey and assessment of the same.

(d) that the accounts of the realisations of the income from various sources of the suit properties including those of the reserved trees be taken from the date of the attach--ment to the date of the suit and further vacation order and the deft. 1 be further ordered to pay the amount found due on accounts.

(e) that the cost of the suit be warded to plff.from Deft. 1.

(f) That plff.be permitted to amend the plaint if and when necessary.

(g) That any other just and equitable relief arising from the suit be also awarded.

It is,therefore,prayed that a decree in Plff's favour be passed accordingly.

Papers submitted per list

8th January 1948.

Signature & verification of Madhvrao Hariharrao Deshpande.

LEGAL DEPARTMENT.

Belgaum Civil Suit No.42/1949.

This suit is filed by the plaintiff for a declaration that the attachment of the suit properties e.g. the forest lands in six villages of the former Sangli State made by the Sangli Darbar in 1878 is automatically vacated on the completion of the heirship enquiry and he is entitled to possession and enjoyment of the suit property. After the enquiry in 1922, the Chief of Sangli resumed the suit properties as they formed part of the Jadid Inam which after the death of the original grantor could be resumed. The order of resumption is valid inasmuch as the grant was a Jadid one which could be resumed after the death of the grantor. The suit would, therefore, be defensible. The defence of the same may be sanctioned on the lines of the appended brief.

4/11

6/11

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
07 NOV 1950

Lecd. on 8/11/50

No. 15527
7-11-1950.

No.16916

Office of the
Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 15th Nov. 1950.

Subject:- Belgaum Civil Suit No. 42 of 1949

MEMORANDUM.

The District Government Pleader, Belgaum, is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which ~~together with two copies of the written statement~~ is sent herewith in advance.

Papers of the case in seven files received from the Collector accompany.

For Remembrancer of Leg

To

The District Government Pleader,
Belgaum

kam. 20.4.50.

Ref. O.S.No. 42 of 1949.

In the Court of Civil Judge, S. Dn., at Belgaum. 2/11

1. Madhavarao Harihar Deshpande of Shahapur .... Plff.

vs.

1. The Sangli State, "Now State of Bombay and five others. .... Defts.

Herein the Written Statement on behalf of Deft No.1, The State of Bombay is as follows :-

1. The Government deny the claim of the plff. in toto.

2. The plff has neither title nor any locus standing to maintain the suit. Plaintiff represents the junior branch and Defts 2 to 6 represent the senior branch of the original common grantee of the inam grant. The Government do not admit that the suit lands were partible nor do they admit they were kept common, as alleged by the plff, in the general partition that took place between the two branches in 1877, nor do they admit that plffs ancestor obtained joint possesstion of his 1/2 share in the suit properties. Hence plaff has no title, nor has he shown any locus standi to maintain the suit.

3. The averment made by the plff in para 4 & 5 of the plaint that "attachment of the suit lands still continues" is totally denied by the deft. It is altogether incorrect & baseless.

4. The suit properties are forest lands in the seven villages of the Sangli State mentioned in the schedule to the plaint- viz. (1) Sulebhavi (2) Tumbguddi (3) Harankol (4) Ningenhatti (5) Kattanbhavi (6) Sutagatti, and (7) Yadelbhavinhatti; and the rules could not alienate his estate which was a public estate - beyond the term of his natural life.

5. The State of Sangli was itself a Saranjam State or a Political Jahagiri and its estate was therefore governed by the laws and rules which governed such Saranjam estates. Each incumbant of the State had only a life estate. The first three villages were granted as gadid inam between 1825 to 1840 by Shrimant Appasaheb - the first Chief of Sangli State to the Common ancestor of plff and Defts 2 to 6 Annaji Narashinha. The latter was also given the next three villages as sub-inam by Shri Jagadgure Swami of Sankeswar and the last one was also given as sub-inam by Kalgi

Kalgi Jadhav. The grants became void after the death of the grantor, and became liable to be resumed.

6. Therefore, the Sangli State in effect resumed the suit lands by an order No. 226 dated 26-7-1882 passed in the Varsa inquiry started on the death of the Virupax-the grandson of the origional grantee in 1878. The order while releasing the estate of Virupax in favour of his widow Radhabhi released all his estate except the suit lands, making it clear that the Inamdar had no title to the forest lands in question. That in effect amounted to resumption of the estate.

7. In 1887 the Sangli State made a special grant of the 4/7th of the forest lands to Narashinha and Keshavrao who were the youngest sons of Konherrao of the senior branch while their elder brothers were alive, On 28-11-1887 Mhali Jawak No.4697 as a mark of special favour. Doubts having arisen as to the extent of the lands comprised before possession could be given by allotment, the matter was again referred to Sangli State. The Sangli State therefore made it clear on 25-10-1890, on the advice of the Political Agent that the special grant comprised only 1457 acres of jungle lands ~~comprised~~ included within the bounderies of the villages mentioned above. Before possession was given by actual measurement and demarkation the grantees took a loan of Rs. 30000/- from the Sangli State under a possessory mortgage on 15-12-1890.

8. In 1906, the then Ruler of the State having died, succeeding Ruler treated the special grant as void, and in the resumption proceedings which were consequently started, the suit lands were actually resumed by an order in September 1922, with the result that ownership and possession in law reverted to the State.

9. The plaintiff has in effect asked for a declaration of ~~the~~ title and for an ~~xxxx~~ injunction- without asking for possession a relief which he could have claimed. ~~But~~ That relief having been not claimed the suit becomes bad, under proviso to section 42 of the Specific Relief Act.

10. Plaintiff will not be entitled to any relief unless the orders of resumption of the years of 1882 and 1922 mentioned

mentioned above ~~above~~ are set aside. Those orders are not now liable to be set aside, any relief in that respect being barred after a lapse of one year from the date of the orders under Article 14 of the Limitation Act.

11. Plaintiff is not entitled to any reliefs claimed. Plaintiff could not claim any account of receipts of the incomes from the suit lands from the Sangli State. The Sangli State did not stand in the position of an accounting party.

12. Even assuming, that the Sangli State could be called upon to account, no accounts could be claimed from the Bombay State because the ~~Bombay~~ Sangli State has been merged in the Bombay State by an act of ~~the~~ Sovereign ~~State~~ authority. After merger the subjects of the merged states can claim only those rights which are recognised by the Sovereign, ~~State.~~ And no such right having been recognised, plff's remedy is misconcieved and untenable.

13. The Sangli State by its resumption orders of 1887 and 1922 stated in clear terms ~~xx~~ that the Inamdars had no title to the suit lands. Since then the Inamdars were never in actual possession. Therefore Government became ~~owners~~ by adverse possession after lapse of 12 years under Article 144 of the Limitation Act. And therefore the suit is barred under that Article read with section 28 of the Limitation Act.

14. The suit is bad for want of a proper ~~notice~~ and legal notice under Section 80 of C.P. Code.

For all these reasons, it is prayed, that the suit be dismissed with costs.

Belgaum.

Dist. Govt. Pleader,
Belgaum.

I District Government Pleader
do hereby declare that what is stated in paragraphs 1 to above is true according to information received and believed to be true. This verification is made at
on the day of 1950.

HSP
12/12

District Government Pleader.

No. 17707
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No. 1), 13th Dec 1950.

Subject:- Belgaum Civil Suit No. B 42 of 49

MEMORANDUM.

With reference to his letter No. 415 dated the 5th Dec 1950 forwarding a draft written statement in the suit noted above for approval, the District Government Pleader, is informed that two copies of the ~~revised~~ draft are forwarded herewith.

For Remembrancer of Legal Affairs.

To

The District Government Pleader, Belgaum

Issued on 13/12

13/12

Asstt

Suits :

Belgaum.

For a declaration that the attachment of suit properties, i.e., forest land in six villages by the Sangli Darbar is automatically vacated and for possession of suit properties.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 1034.

Bombay Castle, 16th January 1951.

Letter from the Collector of Belgaum, No. L.A.W. 867, dated the 7th July 1950—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.

Civil Suit No. 42 of 1949.

Madhavrao Deshpande .... Plaintiff ;

versus

The State of Bombay and others ... ... Defendants.

Memorandum to the District Government Pleader, Belgaum, No. 15916, dated the 15th November 1950—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

G. R., No. 1034, L. D., dated the 16th January 1951.

To

*The Revenue Department,
*The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

*With a copy of the brief.

No. of 1951.

Copy forwarded for information and guidance to

37/19

BELGAUM CIVIL SUIT No. 42 OF 1949.

Chronological Statement of Facts.

The plaintiff has filed this suit for a declaration that the attachment of the suit properties made by the Sangli Darbar in 1878 was *ultra vires* and illegal and he should be considered as being in possession and enjoyment of the same and Government should be given an injunction not to interfere with his possession and enjoyment and in the alternative he should be declared to be entitled to recover the land revenue or rent of the properties. He has also claimed an account from Government of the income of the suit properties from the year 1878 to the date of decree and that he should be awarded costs of the suit.

2. The suit properties are forest lands in villages Sulebhavi, Tumbaguddi, Harankol, Ningenhatti, Kattanbhavi and Yadalabhavinatti. Between years 1825 to 1840 the three villages, viz., Sulebhavi, Tumbaguddi and Harankol were granted by Shrimant Appasaheb the First Chief of Sangli State to one Annaji Narsinha. The latter was also given the villages Ningenhatti and Kattanbhavi as sub-Inam by Shri Jagatguru Swami of Sankeshwar and another village Yadalabhavinatti by one Kalji Jadhav. The former three villages were granted in Inam by Shrimant Appasaheb in 1825. It is therefore apparent that the forest lands in the first three villages are claimed as part of the original grant by the First Chief of Sangli State while the forest lands in the other three villages are claimed as part of the sub-Inam.

3. The original grantee Annaji Narsinha died in 1843 leaving behind him 2 sons—Konher and Naganath. The former had 7 sons of whom the eldest was Virupaux while the latter had only one son named Narihar. The widow of Narihar adopted the plaintiff in 1906. Apparently, therefore, the plaintiff represents the junior branch. On the death of Virupaux the eldest son of Konher, the inam villages were attached in 1878 by the Sangli Darbar pending the heirship enquiry. Radhabai widow of Virupaux was recognized as holder of these inam villages under order No. 92, dated the 11th June 1881 and her name was accordingly entered in the Register. While releasing the villages from attachment the Joint Administrator directed under his order No. 226, dated the 26th July 1882 that the inamdar had no title to the forest lands in these villages. In the meantime the plaintiff's grandfather filed two Civil Suits Nos. 1/1281 and 1/1284 for partition and possession of his share in the joint family properties and obtained decrees in execution of which possession of properties was also secured.

4. In view of the order No. 226, dated 26th July 1882 the forest lands in the villages were retained by the Sangli Darbar but Narsinhrao and Keshavrao two of the seven sons of the original grantee Annaji applied to the Darbar for reconsideration of that order. The Joint Administrator Shrimant Tatyasabeb, the Second Chief of the Sangli State and Captain Wray ordered in 1890 as follows:—

> "Although from the sanads produced, we cannot definitely hold that the memorialists were entitled to any rights over the forest area in their inam villages, still, by way of special favour, we continue to them only, four-sevenths of the forest area in the aforesaid villages."

This order was not given effect to immediately owing to the facts that doubts came to be entertained as to the scope of that order. It was maintained by the Chief that the order related to the forest lands in the three inam villages which were granted by the First Chief of Sangli and not to the lands in the sub-inam villages. The matter was taken up to the Political Agent by Narsinhrao and Keshavrao and on the advise of the Political Agent the Chief of Sangli modified the previous order of 28th November 1887 and limited it to 1,457 acres of land given to Narsinhrao and Keshavrao. The equitable allotment of these acres of land could not be made since in the meantime both Narsinhrao and Keshavrao applied for an advance of Rs. 30,000 from the State as loan on the security of the forest lands to the possession of which they had become entitled under the second order of the Darbar dated the 25th October 1890. The loan was accordingly granted by the Chief on 15th December 1890 on the security of these properties.

5. While dealing with the recovery of the amount under the mortgage in 1906, the late Administrator Capt. Burke apparently thought that the action of the late Chief in releasing from attachment the forest lands in favour of Narsinhrao and Keshavrao was an act of personal favour which the State was not bound to respect after the death of the late Chief. Accordingly on 27th September 1909, notice was directed to be issued to Narsinhrao and Konherrao to show cause why these forest lands should not be resumed. This enquiry continued up to September 1922 in which month the Chief of Sangli passed the order resuming the grant of the forest lands. The plaintiff has filed this suit alleging that he is entitled to a half share in the forest lands, and the other half share belongs to defendants Nos. 2 to 7 and as these defendants were unwilling to join as plaintiffs he alone has filed this suit claiming the whole property on the ground that the resumption order passed by the Sangli Darbar was illegal and *ultra vires* and that the original attachment no longer survives since the heirship enquiry was completed and the heir was recognized as the holder of the inam.

39 21

Grounds of Defence.

Maintainability of the Suit.—The plaintiff has asked for a declaration and injunction without a prayer for the possession of the suit properties. Admittedly he is out of possession in view of which it would not be open to him to ask for merely a declaration and injunction without asking for possession. The suit would, therefore, be bad (*See* Rathan Sabhapatti *v.* Ramaswami, I.L.R. 33 Mad. 452). The plaintiff's suit is, therefore, barred under proviso to section 42 of the Specific Relief Act.

2. *Limitation.*—Inasmuch as the forest lands were not restored after the enquiry was over it would amount to resumption thereof. Further, the suit lands were resumed by the Chief of Sangli in 1922. The present suit would not be tenable unless the plaintiff would succeed in getting those resumption orders set aside. Consequently, the suit being filed a number of years after the aforesaid resumption orders were passed it would be barred by limitation under Article 14 of Schedule I to the Indian Limitation Act.

3. *Merits.*—The plaintiff's claim is defensible even on merits. The history of this grant and the subsequent developments in respect thereof have been clearly and concisely stated by the Chief of Sangli in his order of resumption passed in 1922. From that order it would be clear that the original grant was certainly a Jadid grant, e.g., a grant which was made by the Chief of Sangli after the treaty with the British Government. Under the Treaty the Chief of Sangli was bound to continue only the Kadim grants. So far as the Jadid grants were concerned after the death of the grantor the succeeding Ruler of the State was not at all bound by that grant and it was not only competent for him to resume the grant but was also absolutely necessary as a matter of public policy to do so. The principles on which this was based have been stated by Sir W. Lee-Warner, in his book "The Native States of India" at pp. 294-296. This is traced to the promise made by Charles I to the question made by Lord Primate of Scotland. The question was "Sir, will you likewise promise to preserve and keep inviolate, the privileges, rights and revenues of the Crown of Scotland, and not to transfer and alienate them in any way?" To this the King replied "I promise so to do". Lee-Warner has stated that on the grounds of public policy the inalienability of the public estate and of the revenues of a Native State can without difficulty be supported. That principle was enforced by the British Government from time to time. In 1850 the Court of Directors refused to allow the partition of a State in Central India and in 1848 they applied to all political Jaghirs the rule that "existing incumbents should be held incapable of charging their estates beyond their own life-time".

This order was repeated by the British Government in whole in 1871 in the case of the State of Akkalkot. The Paramount Power, namely, the British Government, therefore, imposes certain restrictions upon the Chiefs of India. In so far as fresh loans were sought at the expenses of other Native States they were governed by the principles of inalienability since Rulers of States would not part with public property. It was on this principle that the order of resumption of 1922 passed by the Chief of Sangli was based. If this principle were strictly applied, the inams granted to Annaji could have been resumed by the Sangli Darbar immediately after the death of the First Chief of Sangli State. It was only out of kindness that these inams were continued even after the death of the First Chief of Sangli. Reverting to the resumption of the Forest lands claimed by the plaintiff it may be mentioned that the original resumption order of 1882 clearly stated that the inamdars had no title to the forest lands in the inam villages. This order would at least extinguish the interest of the inamdars in the forest lands, even assuming that these forest lands did form part of the grant originally made by the Chief of Sangli, for the right to resume the whole grant on the principle aforesaid would include the right to resume part of the grant. In 1890, the order passed by the Chief of Sangli and Captain Wray directed the continuance of 4/7ths of the forest area to Narsinhrao and Keshavrao, which would mean only a grant in favour of these two persons. If that order intended to restore these lands as part of the original grant, it would have been so worded and the continuance could not have been ordered only in favour of Narsinhrao and Keshavrao who were not entitled to it when members properly representing the senior branch were available. Even subsequent events regarding the mortgage of these lands for securing a loan of Rs. 30,000 would clearly indicate that the continuance of these lands to Narsinhrao and Keshavrao was merely personal and not intended to be a grant to the family.

It was noticed by the Administrator Capt. Burke in 1909 that this order of 1890 was clearly illegal inasmuch as the grant could not have been continued after the death of the original grantor. An enquiry started and ultimately the Chief of Sangli passed the resumption order of 1922. This order is clearly legal and was competent for the reason that he could revoke the grant by resumption and his own grant being saranjam any grant made by the previous Chief could not survive after his death. This legal position would apply even to the forest lands in the other three sub-Inam villages which were also Jadid Inam. The plaintiff represents the junior branch and claims no succession to Narsinhrao and Keshavrao. Consequently he can have no claim even if the grant of 1890 were considered a fresh grant and the resumption in 1922 were not valid.

4. Even assuming that the Sangli Darbar had no right to resume the forest lands, it appears that the plaintiff can have no claim against the present Government of the State of Bombay. In Secretary of State *v.* Bai Bajbai, 42 I.A. 229, it was held that " on change of sovereignty the inhabitants of ceding States cannot carry on under the new regime the legal rights which they may have enjoyed under the old and that the only legally enforceable rights they can have as against their new sovereign are those and only those which that new sovereign by agreement express or implied or by legislation chooses to confer upon them." Consequently, the plaintiff would not be entitled to claim the enjoyment of the suit lands on the ground that they formed part of the original grant.

On these grounds the suit would be clearly defensible and it should be dismissed with costs.

Sp. O.S.No. 42 of 1949

W.S. of Deft 1 Ex. 60.

Defts 2 to 4 and 6 Exparte.

Deft 5 is transposed as plff No.2

Ex. 61 4.25

I S S U E S.

1. Whether plffs prove the grants described in paras 2 and 3 plaint, were, hereditary, Darobast, Kulbab, Kulkanu and Jat-Inam as alleged ?
2. Whether they prove that the resumption orders of the at Sangli, passed in 1887 and 1922 were, illegal and ultravires ?.
3. Whether the alleged attachment of these lands after the close of the heirship inquiry of 1878, was illegal and ultravires ?
4. Whether plffs are entitled to a declaration and an injunction, without setting aside these Resumption orders of the State and without being in possession before the suit
5. Whether the claim of plffs is within time under Sec. 14 of Limitaion Act ?
6. Whether Deft 1 prove the adverse possession under Article 144 and section 28 of Limitation Act ?
7. Whether plffs can claim the Bombay State for reasons stated in para 1½ of W.S. Ex. 60 ?
8. Whether plffs can claim an account from Sangli State, for reasons stated in para 11 of W.S. Ex.60 ?
9. If yes, what is due to plffs, after taking an account ?
10. What income has the Sangli State recovered or deemed to have recovered from the date of attachment or resumption, to the date of this suit ?
11. Whether plffs are entitled to the revenue of these suit properties as claimed in the alternative ?
12. Whether plffs are entitled to the declaration and injunction as sought ?

No more sought.

Belgaum.
4-7-1951.

sd. N.V.Ranasubhe
Civil Judge, S.D.Belga

Ex 73 27 इ.अ.नंबर ४२ १९५२

बेळगांव सि.ज.सो.डी. यांचे कोर्टात.

१ माधवराव हरिहरराव अंदेकर — वादी.

वि

१ मुंबई सरकार — प्र.वादी.

दावा रुपये.

यांत वादी तर्फे अर्ज :—

जात इनाम संबधी विल सं. १९५२ मे महिन्या
"True copy" चे गाझेट मध्ये प्रसिद्धा जाहिका आहे. त्या गावीन
आमच्या चौघू दाव्यास बाधयेण्याचा संभव आहे
तरी सदर कामाचा अंतिम परिणाम पाहून घेणे.
नवीने दावा दाखल करेणेस कोर्टाची परवानगी
D.G.P. Belgaum. देऊन वादीस हा दावा परत देणेस परवानगी
मिळणे बद्दल हुकुम व्हावा अशी विनंती आहे.

सरकारने जात इनाम संबधी नवीन कायदे
केल्यान सदरा दावा माझेनाजास्तीत काढून घेणा.
मागे आहे. करिता मे कोर्टाची आमच्या वर
सदर दाव्या संबधी कोर्ट खर्च अशी काढूनच
अशी विनंती आहे.

ता. 26-6-1952 Sd/- M.n.Ashtekar.

Granted.

Sd/-
U.J.S.D.
27-6-1952.

Seen

Sd/- S.V.Mahajan.
Pleader.
27-6-1952.

No objection for withdrawal. But
Government should be awarded full costs

Sd/- M.K.Patil.
D.G.P.Belgaum.
27-6-1952.

Suits:
Belgaum.
For a declaration that the attachment of suit properties, i.e., forest land in six villages by the Sangli Darbar is authmatically vacated and for possession of suit properties.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 1609/52
Bombay Castle, 30th July 1953.

Read Government Resolution, Legal Department, No.1034, dated the 16th January 1951.

Letter from the District Government Pleader, Belgaum No.369, dated the 2nd July 1952, stating that

In the Court of the Civil Judge(Senior Division), Belgaum. Civil Suit No.42 of 1949. Madhavrao Deshpande .. .. Plaintiff; vs. The State of Bombay .. .. Defendants. and others.	:	the suit noted in the margin was

decided by the Civil Judge (Senior Division), Belgaum on the 27th June 1952, when the following order was passed:-

"Plaintiff is allowed to withdraw the suit with a liberty to bring a fresh suit. Vide Ex.73. Plaintiff to pay the costs of Defendant 1 and bear his own. Deft. 5 to bear his costs".

Letter from the District Government Pleader, Belgaum, No.262, dated the 18th May 1953, forwarding a copy of exhibit 73.

RESOLUTION:- The result of the suit is recorded.

By order and in the name of the Governor of Bombay,

original

R.T. Katarki,
Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Belgaum,
The District Government Pleader, Belgaum.

MMS.7.7. Subd. for Sign.

SPW 30.7.53 Subdh. NB 30/7
D.S. Civil